

DAVIS OIL CO.

IBLA 81-407

Decided August 18, 1983

Appeal from decision of the State Director, Wyoming State Office, Bureau of Land Management, denying protest of wilderness study area designation WY-040-311.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of an inventory unit from designation as a wilderness study area and from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

APPEARANCES: Richard H. Bate, Esq., Denver, Colorado, for appellant; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management; Bruce Hamilton, Lander, Wyoming, for Sierra Club.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Davis Oil Company appeals from a decision of the State Director, Wyoming State Office, Bureau of Land Management (BLM), dated January 22, 1981, denying appellant's protest of the designation of unit WY-040-311 as a wilderness study area (WSA). Appellant's protest followed the State Director's designation of unit WY-040-311 as a WSA in the Federal Register on November 14, 1980. 45 FR 75,606 (Nov. 14, 1980).

On May 18, 1981, the Sierra Club sought leave to intervene in the instant appeal, alleging that its members use the lands at issue for hiking, photography, and other forms of recreation. Sierra Club further alleged that it has been an active participant in BLM's wilderness review process. No objections appearing of record, the Board granted Sierra Club's petition to intervene by order of September 1, 1981. Briefs have been filed by appellant, the Bureau of Land Management, and Sierra Club.

Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of

the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1976). In addition, the Secretary is directed to report from time to time to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The review process undertaken pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's designation of unit WY-040-311 as a WSA marks the end of the inventory phase of the review process and the beginning of the study phase.

Key to the inventory conducted by BLM is the definition of "wilderness," as found in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Davis Oil Company alleges that it holds an oil and gas lease within the boundaries of unit WY-040-311, also known as the Alkali Draw WSA. In its statement of reasons on appeal, in opposition to the designation of this unit as a WSA, appellant asserts that "the State Director's decision is erroneous because it results in the retention of lands in the Wilderness Study Area which do not have wilderness characteristics." ^{1/}

Appellant's argument on appeal is directed to the physical characteristics of the lands within the Alkali Draw unit. Appellant's argument focuses

^{1/} Appellant also seeks to challenge a reference in the protest decision to the fact that appellant's post-FLPMA oil and gas lease located within the WSA is subject to the special wilderness stipulation. That issue is outside the scope of the decision below denying the protest of the WSA designation and, hence, is outside the scope of this appeal. Such an issue, to the extent it was not resolved at the time of lease issuance, is properly considered at such time as appellant seeks to engage in exploratory and/or development operations on the lease.

on the unit's opportunities for solitude or a primitive and unconfined type of recreation. Specifically, appellant contends that the boundaries for the Alkali Draw WSA should have been drawn in such a manner as to separate the unit's dominant topographical areas. Appellant asserts that the District Manager should have divided the Alkali Draw unit into two units, one consisting of the "bench" area and the other consisting of the "draw" area, which, appellant further contends, would have eliminated the "bench" area from consideration as a WSA. In its protest of December 15, 1980, counsel for appellant states that the lands which are the subject of the protest provide neither an outstanding opportunity for solitude nor an outstanding opportunity for a primitive and unconfined type of recreation. On appeal counsel describes this area as "flat and unremarkable in character, consisting of typical Southwest Wyoming semi-arid landscape, with no opportunities for solitude or recreation because of its barrenness and high degree of visibility throughout the 'bench' area."

BLM's response to a similar argument in appellant's protest was the following:

It was determined in the inventory that this unit did indeed offer "unquestionable opportunity for solitude." Although the bench area you refer to may not have the opportunities for solitude that other parts of this unit do, we cannot arbitrarily exclude the bench area and be consistent with our guidelines for boundary location. The bench area was not included as a buffer zone, but simply fell within the wilderness study area as determined by road locations.

Decision dated January 21, 1981.

The narrative of the unit, entitled "Staff Specialist Synopsis" contains the following observations regarding outstanding opportunities for solitude or primitive and unconfined recreation:

A vastness characterizes the Alkali Draw (composite) region. Long mountain ridges and rims rise above wide (up to two miles) basins (photo #14). These are aligned in a west-east fashion while the unit is generally oblong shaped with the long axis aligned north-south. This creates a "washboard" effect which intensifies in the extreme south eco-site (Alkali Rim). One can see for miles up and down the basins (photo #15) at the lower elevations and in every direction from the rimtops. Although these views are expansive, outstanding opportunities for solitude can be found due to the "washboard" topographic effect which isolates or removes one from others who might be visiting the area. Considering that this area is a remnant untrammelled portion of the Great Divide Basin-Red Desert Area, its expanses are representative of an arid region which some might construe to be desolation. But this sensation, together with the constancy and force with which the wind blows, is an enhancement that elicits a very definite feeling of aloneness (photo #16). The complete vastness - the emptiness of the landscape - offers unquestionable opportunities for solitude. On the more immediate and physical

basis, solitude can be experienced even more readily in the regions of rims and ridges. These are cut perpendicularly along their edges by many eroded draws and small canyons. These small areas are well screened from sights and sounds of others who might visit the unit.

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The primitive and unconfined recreational opportunities available in the Alkali Draw are splendid. These include horse-backriding, hiking, camping, photography, and sight-seeing for botanical, zoological and geological features. Some small caves, created by natural erosion, also exist to give uniqueness and recreational opportunities.

Interesting and beautiful are the topographic and geologic features found in Alkali Draw (photo #17). The rims and cliff escarpments contain many sites which offer challenging scenic hikes and non-technical climbing opportunities (photo #18). Some exposed cliff faces reveal many layers of geologic strata which contain paleocene fossils (photo #19). Among the outstanding opportunities present here is horsebackriding. This area has frontier imagery and would be an exceptionally good place to demonstrate horsemanship and perhaps re-live old west traditions for a short while. Exploring crevices or caves is an adventure that exists here (photo #20).

[1] Appellant seeks on appeal to have the boundaries of the Alkali Draw WSA readjusted so as to exclude the "bench" area of the unit on the basis that it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation. Generally speaking, a boundary should, according to Organic Act Directive (OAD) 78-61, Change 2 at page 5, be located "on the physical edge of the imprint of man," rather than being located on the basis of the "zone of influence" around an imprint. Moreover, as a general rule, a boundary "should not be further constricted on the basis of opportunity for solitude or primitive and unconfined recreation." OAD 78-61, Change 3, at 3 (emphasis in original); see Timothy O. Kessinger, 72 IBLA 100, 103 (1983). As the OAD further explains: "A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit." OAD 78-61, Change 3, at 3 (emphasis in original). Additionally, the Board has determined that the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory as meeting the outstanding opportunity criterion. Petroleum, Inc., 61 IBLA 139, 148 (1982); Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981). Accordingly, it was not improper for BLM to refuse to readjust the boundaries of the WSA on the basis that certain areas may not satisfy the outstanding opportunity criterion. It is sufficient that outstanding opportunities are available somewhere in the unit.

In the absence of a showing of compelling reasons for modification or reversal, the BLM decision denying appellant's protest must be affirmed. Mitchell Energy Corp., 68 IBLA 219 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

